

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Colfax-NMS, LLC, a California
Limited Liability Company;
**Beverly Gemini Investments,
LLC**, a California Limited Liability
Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Chris Langer complains of Defendants Colfax-NMS, LLC, a California Limited Liability Company; Beverly Gemini Investments, LLC, a California Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of

1 his van and he has a Disabled Person Parking Placard issued to him by the
2 State of California.

3 2. Defendants Colfax-NMS, LLC, and Beverly Gemini Investments, LLC
4 owned the property located where Jinky's Studio Café ("Restaurant") is
5 located at or about 4000 Colfax Avenue, Studio City, California, in May
6 2015.

7 3. Defendants Colfax-NMS, LLC, and Beverly Gemini Investments, LLC
8 own the property located where Jinky's Studio Café ("Restaurant") is located
9 at or about 4000 Colfax Avenue, Studio City, California, currently.

10 4. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for
16 the events herein alleged, or is a necessary party for obtaining appropriate
17 relief. Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20 21 **JURISDICTION & VENUE:**

22 5. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
24 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 6. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 8. The Plaintiff went to the Restaurant in May 2015 to eat.

7 9. The Restaurant is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 10. Parking spaces are one of the facilities, privileges and advantages
10 specifically reserved by defendants to persons who visit the Restaurant.

11 11. Unfortunately, although parking spaces are one of the facilities
12 available to patrons of the parking lot, there was not a single compliant van-
13 accessible handicap parking space available for persons with disabilities that
14 complied with the Americans with Disability Act Accessibility Guidelines
15 (ADAAG) in May 2015.

16 12. Plaintiff, on information and belief, alleges that there used to be a van-
17 accessible parking space designed and reserved for persons with disabilities
18 on the property prior to May 2015.

19 13. The parking space that used to be available for persons with disabilities
20 has been allowed to fade or has been paved over.

21 14. Defendants had no policy or procedure in place to make sure that the
22 accessible parking spaces remain useable in the parking lot in May 2015.

23 15. Instead of having a van-accessible parking space in May 2015, the
24 defendants had two standard parking spaces marked and reserved for
25 persons with disabilities who only need a standard-sized parking space. The
26 parking spaces measured 96 inches in width while the access aisles measured
27 60 inches in width in May 2015.

28 16. Plaintiff needs an eight-foot-wide access aisle or needs a van-

1 alternative space, measuring 132 inches in width that has an access aisle of
2 60 inches in width.

3 17. As configured in May 2015, the parking spaces marked and reserved
4 for persons with disabilities was not van accessible.

5 18. In addition to not being van accessible, the access aisle and parking
6 spaces reserved for persons with disabilities were so faded that it was difficult
7 to make out where the parking spaces began and ended in May 2015.

8 19. Defendants have no policy or practice to keep the access aisles and
9 parking spaces maintained so that they can be used by persons with
10 disabilities.

11 20. Defendants had no policy or practice to keep the access aisles and
12 parking spaces maintained so that they can be used by persons with
13 disabilities in May 2015.

14 21. The plaintiff personally encountered this problem. This inaccessible
15 condition denied the plaintiff full and equal access and caused him difficulty
16 and frustration.

17 22. Plaintiff would like to return and patronize the Restaurant, and has
18 wanted to return since May 2015, but will be deterred from visiting until the
19 defendants cure the violation.

20 23. Plaintiff visits Los Angeles County on a regular and ongoing basis
21 because he attends auctions, car shows, eats, and shops in the county.

22 24. Because of the location of the Restaurant, plaintiff would like to return,
23 and will, in the future.

24 25. The defendants have failed to maintain in working and useable
25 conditions those features required to provide ready access to persons with
26 disabilities.

27 26. Not only have the defendants failed to remove barriers and provide
28 accessible facilities as enumerated above but the removal of these barriers

1 and the provision of accessible facilities is readily achievably done at this
2 location by these defendants.

3 27. Given the obvious and blatant violation, the plaintiff alleges, on
4 information and belief, that there are other violations and barriers on the site
5 that relate to his disability. Plaintiff will amend the complaint, to provide
6 proper notice regarding the scope of this lawsuit, once he conducts a site
7 inspection. However, please be on notice that the plaintiff seeks to have all
8 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
9 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
10 he can sue to have all barriers that relate to his disability removed regardless
11 of whether he personally encountered them).

12 28. Additionally, on information and belief, the plaintiff alleges that the
13 failure to remove these barriers was intentional because: (1) these particular
14 barriers are intuitive and obvious; (2) the defendants exercised control and
15 dominion over the conditions at this location and, therefore, the lack of
16 accessible facilities was not an “accident” because had the defendants
17 intended any other configuration, they had the means and ability to make the
18 change.

19
20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
21 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
22 defendants (42 U.S.C. section 12101, et seq.)

23 29. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 30. Under the ADA, it is an act of discrimination to fail to ensure that the
27 privileges, advantages, accommodations, facilities, goods and services of any
28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42
2 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,
4 or procedures, when such modifications are necessary to afford
5 goods, services, facilities, privileges, advantages, or
6 accommodations to individuals with disabilities, unless the
7 accommodation would work a fundamental alteration of those
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
12 Appendix “D.”
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to
17 the maximum extent feasible, the path of travel to the altered
18 area and the bathrooms, telephones, and drinking fountains
19 serving the altered area, are readily accessible to and usable by
20 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

21 31. Any business that provides parking spaces must provide accessible
22 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
23 every eight of those accessible parking spaces but not less than one must be a
24 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
25 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
26 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

27 32. Here, the lack of a van-accessible parking space is a violation of the
28 law.

1 33. Any business that provides parking spaces must provide accessible
2 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify
3 as a reserved handicap parking space, the space must be properly marked and
4 designated. Under the ADA, the method, color of marking, and length of the
5 parking space are to be addressed by State or local laws or regulations. See 36
6 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to
7 properly and effectively reserve a parking space for persons with disabilities,
8 each parking space must be at least 216 inches in length. CBC § 11B-502.2
9 Under the California Building Code, to properly and effectively reserve a
10 parking space for persons with disabilities, each such space must be
11 identified with a reflectorized sign permanently posted adjacent to and
12 visible from each stall or space. CBC § 1129B.4. The sign must consist of the
13 International Symbol of Accessibility (♿) in white on a blue background. *Id.* It
14 cannot be smaller than 70 square inches and must be mounted so that there
15 is a minimum of 80 inches from the bottom of the sign to the parking space.
16 *Id.* Signs must be posted so that they cannot be obscured by a vehicle parking
17 in the space. *Id.* An additional sign or additional language below the symbol
18 of accessibility must state, “Minimum Fine \$250” to ensure that the space
19 remains available for persons with disabilities. *Id.* Another sign must be
20 posted in a conspicuous place at the entrance to the parking lot or
21 immediately adjacent to each handicap parking space, with lettering 1 inch in
22 height, that clearly and conspicuously warn that unauthorized vehicles
23 parking in the handicap parking spaces can be towed at the owner’s expense.
24 *Id.* Additionally, the surface of the handicap parking stall must have a profile
25 view of a wheelchair occupant (♿) that is 36 inches by 36 inches. *Id.* And the
26 surface of the access aisle must have a blue border. CBC § 1129B.3. The
27 words “NO PARKING” in letters at least a foot high must be painted on the
28 access aisle. *Id.*

1 34. Here, there was no “NO PARKING” lettering, the defendants allowed
2 the blue striping to fade to near oblivion, and the parking simply failed to
3 comply.

4 35. A public accommodation must maintain in operable working condition
5 those features of its facilities and equipment that are required to be readily
6 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

7 36. Here, the failure to ensure that the accessible facilities were available
8 and ready to be used by the plaintiff is a violation of the law.

9 37. Given its location and options, the Restaurant is a business that the
10 plaintiff will continue to desire to patronize but he has been and will continue
11 to be discriminated against due to the lack of accessible facilities and,
12 therefore, seeks injunctive relief to remove the barriers.

13
14 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
15 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
16 51-53)

17 38. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 39. Because the defendants violated the plaintiffs’ rights under the ADA,
21 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
22 Code § 51(f), 52(a).)

23 40. Because the violation of the Unruh Civil Rights Act resulted in
24 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
25 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
26 55.56(a)-(c).)

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PRAYER:

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

- 1. For injunctive relief, compelling defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.
- 2. Damages under the Unruh Civil Rights Act which damages provide for actual damages and a statutory minimum of \$4,000.
- 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

Dated: November 11, 2015 CENTER FOR DISABILITY ACCESS


By: _____
Mark Potter, Esq.
Attorneys for Plaintiff